

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:PEN:PIT:TL-N-4021-00
EJLaubach

date:

to: Jerry Fisher
Team Manager, Group 1344

from: Associate District Counsel, Pennsylvania District, Pittsburgh

subject: Proper Caption Following Merger of [REDACTED] and [REDACTED]

re: [REDACTED]

EIN: [REDACTED]

You have requested our advice: -

ISSUE

What is the proper caption which should appear on consents to extend the statutory period for assessment, closing agreements, and other documents for [REDACTED] after it changed its name to [REDACTED] and then merged into [REDACTED] in a reverse acquisition.

CONCLUSION

The proper identification for [REDACTED] only on consents to extend the assessment period or on notices of deficiency should be "[REDACTED] (EIN: [REDACTED]), as successor by merger to [REDACTED] (EIN: [REDACTED]) and as alternative agent for the [REDACTED] consolidated group for the group's taxable years [REDACTED]." On other documents, such as closing agreements, the taxpayer should be described as "[REDACTED] (EIN: [REDACTED]), as successor by merger to [REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED]."

DISCUSSION

[REDACTED], EIN: [REDACTED], filed consolidated income tax returns in the name of [REDACTED] for the years [REDACTED]

through [REDACTED], which years are currently under examination. The Examination team wishes to secure consents to extend the statute of limitations on assessment and Appeals is in the process of preparing closing agreements for some of the issues involved in these years. Both Exam and Appeals have sought our advice how their consents, closing agreements, and other documents should be captioned since [REDACTED] no longer exists.

In [REDACTED], [REDACTED] acquired [REDACTED]. The following year [REDACTED] changed its name to [REDACTED]. On [REDACTED], [REDACTED] merged into [REDACTED] with [REDACTED] being the surviving corporation. This transaction was a reverse acquisition for federal tax purposes with [REDACTED] becoming the new common parent for the [REDACTED] consolidated group. The former shareholders of [REDACTED] received more than [REDACTED] percent of the fair market value of the outstanding [REDACTED] common stock. [REDACTED]'s existence was terminated by this merger.

We believe that the proper party to execute consents, closing agreements, and other documents is [REDACTED], as successor by merger to [REDACTED], which was formerly known as [REDACTED].

[REDACTED] engaged in a reverse acquisition with [REDACTED] for tax purposes. Its existence terminated following the merger and [REDACTED] became the new common parent of the [REDACTED] affiliated group. In Southern Pacific Company v. Commissioner, 84 T.C. 395 (1985), the Tax Court held that in a reverse acquisition transaction where the old common parent goes out of existence, the new common parent becomes the agent for the affiliated group for both pre- and post-reverse acquisition years. Thus, the rule of Treas. Reg. § 1.1502-75(d)(3)(i), which provides that the acquiring corporation becomes the new common parent of the old consolidated group, applies to determine which entity becomes the common parent for years before and after the reverse acquisition. See also Interlake Corp. v. Commissioner, 112 T.C. 103, 113-14 (1999). Thus, under Southern Pacific, [REDACTED] would be the proper party to execute any documents for the pre-reverse acquisition years of [REDACTED].

In addition, Treas. Reg. § 1.1502-77T sets forth alternative agents for a consolidated group for purposes of signing consents to extend the statutory period of assessment or for issuing a notice of deficiency if the common parent ceases to be the common parent.¹

¹This regulation only applies for purposes of securing consents to extend the statute of limitations or issuing a notice of deficiency. It does not include closing agreements.

Under § 1.1502-77T(4)(ii) a consent to extend the period of assessment can be executed by a successor to the former common parent in a transaction to which section 381(a) applies. A merger would qualify under section 381(a). Section 1.1502-77T(4)(iv) also follows the Southern Pacific holding that, if a consolidated group remains in existence under the reverse acquisition rules, the common parent of the group at the time that a waiver is given may execute the consent. Under either provision, the proper entity again to execute a consent for the old [REDACTED] consolidated group would be [REDACTED].

Accordingly, the caption of any consent or notice of deficiency under Treas. Reg. § 1.1502-77T should read, "[REDACTED] (EIN: [REDACTED]), as successor by merger to [REDACTED] (EIN: [REDACTED]) and as alternative agent for the [REDACTED] consolidated group for the group's taxable years ____." Closing agreements and other legal documents should be captioned, "[REDACTED] (EIN: [REDACTED]), as successor by merger to [REDACTED] (EIN: [REDACTED]), formerly known as [REDACTED]." [REDACTED]

If you have any questions, please call Attorney Edward J. Laubach, Jr. at 412-644-3443.

EDWARD F. PEDUZZI, JR.
Associate District Counsel